Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* OLSON ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 04–759. Argued October 12, 2005—Decided November 8, 2005

Claiming that federal mine inspectors' negligence helped cause a mine accident, two injured workers (and a spouse) sued the United States under the Federal Tort Claims Act (FTCA or Act), which authorizes private tort actions against the Government "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred," 28 U. S. C. §1346(b)(1). The District Court dismissed in part on the ground that the allegations did not show that Arizona law would impose liability upon a private person in similar circumstances. The Ninth Circuit reversed, reasoning from two premises: (1) Where unique governmental functions are at issue, the Act waives sovereign immunity if a state or municipal entity would be held liable under the law where the activity occurred, and (2) federal mine inspections are such unique governmental functions since there is no private-sector analogue for mine inspections. Because Arizona law would make a state or municipal entity liable in the circumstances alleged, the Circuit concluded that the United States' sovereign immunity was waived.

Held: Under §1346(b)(1), the United States waives sovereign immunity only where local law would make a "private person" liable in tort, not where local law would make "a state or municipal entity" liable. Pp. 2–5.

(a) The Ninth Circuit's first premise is too broad, reading into the Act something that is not there. Section 1346(b)(1) says that it waives sovereign immunity "under circumstances where the United States, if a *private person*," not "the United States, if a state or municipal entity," would be liable. (Emphasis added.) This Court has consistently adhered to this "private person" standard, even when

uniquely governmental functions are at issue. *Indian Towing Co.* v. *United States*, 350 U. S. 61, 64; *Rayonier Inc.* v. *United States*, 352 U. S. 315, 318. Even though both these cases involved Government efforts to *escape* liability by pointing to the *absence* of municipal entity liability, there is no reason for treating differently a plaintiff's effort to *base* liability solely upon the fact that a State would impose liability upon a state governmental entity. Nothing in the Act's context, history, or objectives or in this Court's opinions suggests otherwise. Pp. 2–3.

(b) The Ninth Circuit's second premise reads the Act too narrowly. Section 2674 makes the United States liable "in the same manner and to the same extent as a private individual under *like circumstances*." (Emphasis added.) The words "like circumstances" do not restrict a court's inquiry to the *same circumstances*, but require it to look further afield. See, *e.g.*, *Indian Towing*, *supra*, at 64. The Government in effect concedes, and other Courts of Appeals' decisions applying *Indian Towing*'s logic suggest, that private person analogies exist for the federal mine inspectors' conduct at issue. The Ninth Circuit should have looked for a such an analogy. Pp. 3–4.

(c) The lower courts should decide in the first instance precisely which Arizona tort law doctrine applies here. P. 5.

362 F. 3d 1236, vacated and remanded.

BREYER, J., delivered the opinion for a unanimous Court.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 04–759

UNITED STATES, PETITIONER *v.* JOSEPH OLSON ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[November 8, 2005]

JUSTICE BREYER delivered the opinion of the Court.

The Federal Tort Claims Act (FTCA or Act) authorizes private tort actions against the United States "under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U. S. C. §1346(b)(1). We here interpret these words to mean what they say, namely, that the United States waives sovereign immunity "under circumstances" where local law would make a "*private person*" liable in tort. (Emphasis added.) And we reverse a line of Ninth Circuit precedent permitting courts in certain circumstances to base a waiver simply upon a finding that local law would make a "state or municipal entit[y]" liable. See, *e.g.*, *Hines* v. *United States*, 60 F. 3d 1442, 1448 (1995); *Cimo* v. *INS*, 16 F. 3d 1039, 1041 (1994); *Cameron* v. *Janssen Bros. Nurseries, Ltd.*, 7 F. 3d 821, 825 (1993); *Aguilar* v. *United States*, 920 F. 2d 1475, 1477 (1990); *Doggett* v. *United States*, 875 F. 2d 684, 689 (1988).

I

In this case, two injured mine workers (and a spouse)

have sued the United States claiming that the negligence of federal mine inspectors helped bring about a serious accident at an Arizona mine. The Federal District Court dismissed the lawsuit in part upon the ground that their allegations were insufficient to show that Arizona law would impose liability upon a private person in similar circumstances. The Ninth Circuit, in a brief *per curiam* opinion, reversed this determination. It reasoned from two premises. First, where "'unique governmental functions'" are at issue, the Act waives sovereign immunity if "'a state or municipal entity would be [subject to liability] under the law [. . .] where the activity occurred.'" 362 F. 3d 1236, 1240 (2004) (citing *Hines*, *supra*, at 1448, and quoting *Doggett*, *supra*, at 689, and *Concrete Tie of San Diego, Inc.* v. *Liberty Constr., Inc.*, 107 F. 3d 1368, 1371 (CA9 1997)). Second, federal mine inspections being regulatory in nature are such "'unique governmental functions,'" since "there is no private-sector analogue for mine inspections." 362 F. 3d, at 1240 (quoting in part *Doggett*, *supra*, at 689). The Circuit then held that Arizona law would make "state or municipal entities" liable in the circumstances alleged; hence the FTCA waives the United States' sovereign immunity. 362 F. 3d, at 1240.

II

We disagree with both of the Ninth Circuit's legal premises.

A

The first premise is too broad, for it reads into the Act something that is not there. The Act says that it waives sovereign immunity "under circumstances where the United States, if a *private person*," not "the United States, if a state or municipal entity," would be liable. 28 U. S. C. §1346(b)(1) (emphasis added). Our cases have consistently adhered to this "private person" standard. In *Indian*

Towing Co. v. *United States*, 350 U. S. 61, 64 (1955), this Court rejected the Government's contention that there was "no liability for negligent performance of 'uniquely governmental functions.'" It held that the Act requires a court to look to the state-law liability of private entities, not to that of public entities, when assessing the Government's liability under the FTCA "in the performance of activities which private persons do not perform." *Ibid.* In *Rayonier Inc.* v. *United States*, 352 U. S. 315, 318–319 (1957), the Court rejected a claim that the scope of FTCA liability for "'uniquely governmental'" functions depends on whether state law "imposes liability on municipal or other local governments for the negligence of their agents acting in" similar circumstances. And even though both these cases involved Government efforts to *escape* liability by pointing to the *absence* of municipal entity liability, we are unaware of any reason for treating differently a plaintiff's effort to *base* liability solely upon the fact that a State would impose liability upon a municipal (or other state governmental) entity. Indeed, we have found nothing in the Act's context, history, or objectives or in the opinions of this Court suggesting a waiver of sovereign immunity solely upon that basis.

B

The Ninth Circuit's second premise rests upon a reading of the Act that is too narrow. The Act makes the United States liable "in the same manner and to the same extent as a private individual under *like circumstances*." 28 U. S. C. §2674 (emphasis added). As this Court said in *Indian Towing*, the words "'like circumstances'" do not restrict a court's inquiry to the *same circumstances*, but require it to look further afield. 350 U. S., at 64; see also S. Rep. No. 1400, 79th Cong., 2d Sess., 32 (1946) (purpose of FTCA was to make the tort liability of the United States "the same as that of a private person under like circum-

stance, in accordance with the local law"). The Court there considered a claim that the Coast Guard, responsible for operating a lighthouse, had failed "to check" the light's "battery and sun relay system," had failed "to make a proper examination" of outside "connections," had "fail[ed] to check the light" on a regular basis, and had failed to "repair the light or give warning that the light was not operating." *Indian Towing*, 350 U. S., at 62. These allegations, the Court held, were analogous to allegations of negligence by a private person "who undertakes to warn the public of danger and thereby induces reliance." *Id.*, at 64–65. It is "hornbook tort law," the Court added, that such a person "must perform his 'good Samaritan' task in a careful manner." *Ibid.*

The Government in effect concedes that similar "good Samaritan" analogies exist for the conduct at issue here. It says that "there are private persons in 'like circumstances'" to federal mine inspectors, namely "private persons who conduct safety inspections." Reply Brief for United States 3. And other Courts of Appeals have found ready private person analogies for Government tasks of this kind in FTCA cases. *E.g.*, *Dorking Genetics* v. *United States*, 76 F. 3d 1261 (CA2 1996) (inspection of cattle); *Florida Auto Auction of Orlando, Inc.* v. *United States*, 74 F. 3d 498 (CA4 1996) (inspection of automobile titles); *Ayala* v. *United States*, 49 F. 3d 607 (CA10 1995) (mine inspections); *Myers* v. *United States*, 17 F. 3d 890 (CA6 1994) (same); *Howell* v. *United States*, 932 F. 2d 915 (CA11 1991) (inspection of airplanes). These cases all properly apply the logic of *Indian Towing*. Private individuals, who do not operate lighthouses, nonetheless may create a relationship with third parties that is similar to the relationship between a lighthouse operator and a ship dependent on the lighthouse's beacon. *Indian Towing*, *supra*, at 64–65, 69. The Ninth Circuit should have looked for a similar analogy in this case.

III

Despite the Government's concession that a private person analogy exists in this case, the parties disagree about precisely which Arizona tort law doctrine applies here. We remand the case so that the lower courts can decide this matter in the first instance. The judgment of the Ninth Circuit is vacated, and the case is remanded for proceedings consistent with this opinion.

It is so ordered.